

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

# HOUSE BILL 2204

## AN ACT

AMENDING SECTIONS 23-671, 23-672 AND 23-681, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 4, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-682; AMENDING SECTIONS 23-773, 41-1992 AND 41-1993, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 14, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1995; RELATING TO THE DEPARTMENT OF ECONOMIC SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-671, Arizona Revised Statutes, is amended to  
3 read:

4 23-671. Appeal tribunals

5 A. The department shall establish one or more impartial appeal  
6 tribunals to hear and decide disputed claims. Such appeal tribunals shall  
7 consist in each case of one member who shall be a salaried examiner selected  
8 on a nonpartisan merit basis. A person shall not participate on behalf of  
9 the department in any case in which he is an interested party.

10 B. Within a reasonable time before the date set for a hearing, any  
11 interested party to a hearing before the appeal tribunal may file an  
12 affidavit for change of appeal tribunal and the department shall immediately  
13 transfer the matter to another appeal tribunal. AN INTERESTED PARTY MAY  
14 ELECTRONICALLY FILE THE AFFIDAVIT FOR CHANGE OF APPEAL TRIBUNAL UNDER THIS  
15 SUBSECTION. Reasonable time shall be established by regulation. Except for  
16 cause not more than one change of appeal tribunal shall be granted to any one  
17 party.

18 C. An appeal tribunal may refer any case before it or any question  
19 involved therein to the appeals board established pursuant to section 23-672.

20 D. Unless an appeal is withdrawn or the proceedings are removed or  
21 referred to the appeals board, an appeal tribunal, after giving reasonable  
22 notice and affording all interested parties reasonable opportunity for a fair  
23 hearing, shall make a decision. The parties to the appeal shall be promptly  
24 notified of the decision and the reasons ~~therefore~~ FOR THE DECISION. The  
25 decision shall become final unless within fifteen days after mailing OR  
26 ELECTRONIC TRANSMISSION of the decision any interested party files a written  
27 OR ELECTRONICALLY TRANSMITTED petition for review with the appeals board or  
28 the appeals board assumes jurisdiction in accordance with ~~the provisions of~~  
29 subsection E of this section.

30 E. ~~Prior to~~ BEFORE the date on which an appeal tribunal decision  
31 becomes final, the appeals board on its own motion may, by notice mailed to  
32 all interested parties, either:

33 1. Set aside the decision of the appeal tribunal and remand the  
34 proceedings to another appeal tribunal for review and decision.

35 2. Order the taking of additional evidence.

36 3. Remove the proceedings to itself for review and decision.

37 F. If the appeals board removes a case to itself pursuant to this  
38 section, the appeals board may order the taking of additional evidence and  
39 may affirm, reverse, modify or set aside the decision of the appeal  
40 tribunal. The appeals board shall promptly notify the parties to the  
41 proceedings of its decision.

1           Sec. 2. Section 23-672, Arizona Revised Statutes, is amended to read:  
2           23-672. Appeals board; review of board decision

3           A. Within the department, an appeals board is established consisting  
4 of four members. The director shall appoint the members of the appeals board  
5 and shall designate one member to serve as chairman.

6           B. Hearings conducted by or at the direction of the appeals board  
7 shall be conducted as provided by section 23-674 and other provisions of this  
8 chapter. The department shall prescribe by rule the procedures for  
9 petitioning for review, removal of cases to the board and appeals under  
10 section 23-673. AN INTERESTED PARTY MAY FILE EITHER A WRITTEN OR ELECTRONIC  
11 PETITION FOR REVIEW. ~~Upon~~ ON the filing of a petition for review, the  
12 department shall prepare a complete record unless the parties stipulate  
13 otherwise.

14           C. In any case in which a petition for review of an appeal tribunal or  
15 hearing officer decision has been filed by an interested party, the appeals  
16 board may remand the case to any appeal tribunal or hearing officer for  
17 further proceedings or may review the matter on the basis of the record in  
18 the case, take additional evidence or rehear the matter and affirm, reverse,  
19 modify or set aside the decision of the appeal tribunal or hearing officer.  
20 ~~Upon~~ ON notice to the interested parties, a petition for review may be  
21 reviewed by one member of the appeals board designated by the chairman. If  
22 an interested party objects to review by one board member, the matter shall  
23 be heard by three members of the appeals board.

24           D. Unless a petition for hearing or review of a department  
25 determination made under article 5 of this chapter is withdrawn, the appeals  
26 board after affording the parties reasonable opportunity for a fair hearing  
27 shall issue its decision.

28           E. Every decision of the appeals board shall be in writing. If the  
29 decision is issued by three members of the appeals board, and the appeals  
30 board is not unanimous, the decision of the majority shall control. The  
31 minority may file a dissent from the decision, setting forth the reasons  
32 ~~therefore~~ FOR THE DISSENT. All interested parties shall be promptly notified  
33 of the decision and the reasons ~~therefore~~ FOR THE DECISION. Notice to the  
34 parties of the decision shall be accompanied by instructions explaining the  
35 procedure for requesting review as described in subsection F of this section  
36 and clearly indicating the final date for filing a request for review.

37           F. A party dissatisfied with the decision under subsection E of this  
38 section may file a request for review within thirty days from the date of the  
39 decision, which shall be a written OR ELECTRONIC request and memorandum  
40 stating the reasons why the appeals board's decision is in error and  
41 containing appropriate citations of the record, rules and other authority.  
42 ~~Upon~~ ON motion, and for good cause, the appeals board may extend the time for  
43 filing a request for review. The timely filing of such a request for review  
44 is a prerequisite to any further appeal. The appeals board shall notify all  
45 parties of the filing of a request for review and shall allow fifteen days

1 from the date of the notice for any party to respond. Thereafter, the  
2 appeals board shall issue a decision ~~upon~~ ON review affirming, modifying or  
3 reversing its decision, or ordering the taking of additional testimony. All  
4 parties shall be given written notice by mail of the decision ~~upon~~ ON review.

5 Sec. 3. Section 23-681, Arizona Revised Statutes, is amended to read:

6 23-681. Changing hearing date: good cause

7 A. The scheduled hearing date may be advanced or postponed if the  
8 parties agree or on a showing of good cause.

9 B. Good cause exists if the request is reasonable or the circumstance  
10 causing the request is beyond the control of the requesting party and failure  
11 to grant the postponement would cause undue hardship to the requesting party.

12 C. The department of economic security shall adopt rules:

13 1. To set standards under which a party may be excused for failure to  
14 attend a hearing for good cause.

15 2. TO ALLOW A PARTY WHO FAILED TO ATTEND A HEARING TO FILE A WRITTEN  
16 OR ELECTRONIC REQUEST TO REOPEN THE HEARING.

17 Sec. 4. Title 23, chapter 4, article 3, Arizona Revised Statutes, is  
18 amended by adding section 23-682, to read:

19 23-682. Service of documents by electronic means

20 NOTWITHSTANDING SECTION 41-1002, SUBSECTION B AND SECTION 41-1063, THE  
21 APPEAL TRIBUNAL OR APPEALS BOARD, AS AN ALTERNATIVE TO ANY OTHER MEANS OF  
22 SERVICE PERMITTED OR REQUIRED BY ANY LAW, MAY SERVE OR DELIVER ANY NOTICE,  
23 DECISION OR ORDER OR ANY OTHER DOCUMENT BY ELECTRONIC MEANS IF THE PARTY  
24 BEING SERVED CONSENTS IN WRITING OR ON THE RECORD TO SERVICE BY ELECTRONIC  
25 MEANS. SERVICE BY ELECTRONIC MEANS IS DEEMED COMPLETE ON TRANSMISSION.

26 Sec. 5. Section 23-773, Arizona Revised Statutes, is amended to read:

27 23-773. Examination and determination of claims

28 A. A representative designated by the department as a deputy shall  
29 promptly examine any claim for benefits and, on the basis of the facts found  
30 by the deputy, shall determine whether or not the claim is valid. If the  
31 claim is valid, the deputy shall also determine the week with respect to  
32 which the benefit year shall commence, the weekly benefit amount payable and  
33 the maximum duration of the benefit.

34 B. The deputy shall promptly notify the claimant and any other  
35 interested parties of the determination and the reasons for the  
36 determination. Except as provided in subsection D of this section, unless  
37 the claimant or an interested party, within seven calendar days after the  
38 delivery of notification, or within fifteen calendar days after notification  
39 was mailed to the claimant's or interested party's last known address, files  
40 an appeal from the determination, it shall become final, and benefits shall  
41 be paid or denied in accordance with the determination. THE DEPARTMENT SHALL  
42 ADOPT RULES TO ALLOW AN APPEAL TO BE FILED IN WRITING, ELECTRONICALLY OR BY  
43 TELEPHONE. If an appeal tribunal affirms a determination of the deputy  
44 allowing benefits, or the appeals board affirms a determination or decision  
45 allowing benefits, the benefits shall be paid regardless of any appeal that

1 may thereafter be taken, but if that decision is finally reversed, no  
2 employer's account shall be charged with benefits so paid.

3 C. ~~Upon~~ ON receipt of a request from an interested party for  
4 information about a deputy's determination made pursuant to this section or  
5 section 23-673, the department shall make available by memorandum or other  
6 written document within five days after receipt of the request the following  
7 information:

8 1. The facts considered and the facts relied on in making the  
9 determination.

10 2. The specific statutes, regulations or other authority relied on in  
11 making the determination.

12 3. The reasoning applied in making the determination.

13 D. Before the time for appeal as prescribed in subsection B of this  
14 section has expired, an interested party may request a reconsidered  
15 determination. The department shall examine the request and, within seven  
16 calendar days, deny the request or issue a reconsidered determination. If  
17 the department denies the request based on an alleged failure of the  
18 interested party to make a timely response but the interested party  
19 subsequently proves that the response was timely filed and received by the  
20 department, the department shall report that result to the joint legislative  
21 budget committee. The interested party may prove that a response was timely  
22 filed by using evidence of fax records that documents the date and time when  
23 a faxed response was transmitted and received by the department. A request  
24 for reconsideration that is denied shall be treated as an appeal, and the  
25 same procedure shall be followed as provided for in case of appeal from the  
26 original determination. If a reconsidered determination is issued, the time  
27 for appeal shall run from the date of issuance of the reconsidered  
28 determination. The employer and the claimant shall each be permitted no more  
29 than one request for reconsideration on each case.

30 E. Before the actual filing of an appeal under subsection B of this  
31 section, but not later than the time permitted to appeal, the department on  
32 its own motion may issue a reconsidered determination. After the time for  
33 appeal has expired, but within one year after the issuance of the original  
34 determination, the department with authorization of the unemployment  
35 insurance program administrator may issue a reconsidered determination, on  
36 the basis of newly discovered evidence that by due diligence could not have  
37 been previously discovered, if no administrative or judicial review has  
38 occurred or is pending on the original determination. If a redetermination  
39 is based on fraud, the one year limitation on the issuance of  
40 redeterminations does not apply.

41 F. Prompt notice in writing of any reconsidered determination under  
42 subsection E of this section and the reasons for reconsideration shall be  
43 given to all interested parties. An interested party may appeal within the  
44 time prescribed under subsection B of this section, and the same procedure

1 shall be followed as provided for in case of an appeal from the original  
2 determination.

3 Sec. 6. Section 41-1992, Arizona Revised Statutes, is amended to read:  
4 41-1992. Hearing officers: powers and duties

5 A. The director shall appoint hearing officers who shall conduct such  
6 hearings as the director may determine are necessary in accordance with law.

7 B. Within a reasonable time ~~prior to~~ BEFORE the date set for the  
8 hearing any interested party to a hearing before the department may file an  
9 affidavit for change of hearing officer against any hearing officer of the  
10 department hearing such matters and the hearing officer shall immediately  
11 transfer the matter to another hearing officer of the department who shall  
12 preside ~~therein~~ IN THE MATTER. Reasonable time shall be established by  
13 regulation. Not more than one change of hearing officer shall be granted to  
14 any one party.

15 C. In every contested case, the hearing officer shall issue to all  
16 interested parties a decision on the record ~~which~~ THAT includes findings of  
17 fact and conclusions of law. The decision shall become the final decision of  
18 the department within fifteen days after it is mailed OR ELECTRONICALLY  
19 TRANSMITTED to an interested party unless a written petition for review has  
20 been filed or the case has been removed to the appeals board for review and  
21 decision.

22 D. The appeals board established pursuant to section 23-672 is  
23 authorized to review any hearing officer's decision ~~upon~~ ON timely filing of  
24 a petition for review by an interested party. On review, the appeals board  
25 may affirm, reverse, modify or set aside a hearing officer's decision or  
26 remand the case to any hearing officer for additional evidence, rehearing or  
27 MODIFICATION OF decision.

28 E. ~~Upon~~ ON notice to all interested parties, the appeals board may  
29 remove to itself any case pending before any hearing officer before a  
30 decision becomes final.

31 F. The department shall prescribe by regulation procedures for  
32 implementing ~~the provisions of~~ this section.

33 Sec. 7. Section 41-1993, Arizona Revised Statutes, is amended to read:  
34 41-1993. Judicial review

35 A. Any party aggrieved by a decision of the director is entitled to  
36 judicial review of the decision pursuant to ~~the provisions of~~ title 12,  
37 chapter 7, article 6.

38 B. Any party aggrieved by a decision ~~upon~~ ON review of the appeals  
39 board may file an application for appeal to the court of appeals with the  
40 clerk of the appeals board within thirty days of the date of mailing OR  
41 ELECTRONIC TRANSMISSION of the decision ~~upon~~ ON review, except as provided in  
42 subsection C of this section. ~~Upon~~ ON the filing of an application for  
43 appeal, the clerk of the appeals board shall transmit to the court of appeals  
44 the application for appeal, the original decision of the appeals board, all  
45 requests for review and responses, and the decision ~~upon~~ ON review of the

1 appeals board. The clerk of the appeals board shall also transmit any  
 2 portions of the record before the department requested by the court of  
 3 appeals. The clerk of the appeals board shall not process an application for  
 4 appeal unless the appellant has previously filed a timely request for review  
 5 under section 23-672 or 41-1992 and a decision ~~upon~~ ON review has been  
 6 issued. The court of appeals shall thereafter grant or deny the application  
 7 for appeal. If the application is denied, the decision ~~upon~~ ON review of the  
 8 appeals board shall be deemed final, and no further appeal may be taken. If  
 9 the application is granted, the rules for appeals in civil actions shall  
 10 apply, commencing with the preparation and transmittal of the complete record  
 11 before the department and a record index. No bond for costs on appeal or  
 12 docket fee shall be required. The department and all parties before the  
 13 appeals board shall be given notice of the appeal and an opportunity to  
 14 appear. All such appeals shall be limited to the record before the  
 15 department unless the court orders otherwise. No issue may be raised on  
 16 appeal which has not been raised in the request for review before the appeals  
 17 board. The department shall provide the record for use by the court and by  
 18 any parties who request copies. The cost of providing the record is a  
 19 taxable cost if the department prevails. The court of appeals may designate  
 20 one department or division one to hear all appeals under this section.

21 C. Any party aggrieved by a decision on review of the appeals board  
 22 concerning tax liability, collection or enforcement may appeal to the tax  
 23 court, as defined in section 12-161, within thirty days after the date of  
 24 mailing OR ELECTRONIC TRANSMISSION of the decision on review. The appellant  
 25 need not pay any of the tax, penalty or interest upheld by the appeals board  
 26 in its decision on review before initiating, or in order to maintain an  
 27 appeal to the tax court pursuant to this section.

28 D. Any appeal that is taken to tax court pursuant to this section is  
 29 subject to the following provisions:

30 1. No injunction, writ of mandamus or other legal or equitable process  
 31 may issue in an action in any court in this state against an officer of this  
 32 state to prevent or enjoin the collection of any tax, penalty or interest.

33 2. The action shall not begin more than thirty days after the date of  
 34 mailing OR ELECTRONIC TRANSMISSION of the appeals board's decision on review.  
 35 Failure to bring the action within thirty days after the date of mailing OR  
 36 ELECTRONIC TRANSMISSION of the appeals board's decision on review constitutes  
 37 a waiver of the protest and a waiver of all claims against this state arising  
 38 from or based on the illegality of the tax, penalties and interest at issue.

39 3. The scope of review of an appeal to tax court pursuant to this  
 40 section shall be governed by section 12-910, applying section 23-613.01 as  
 41 that section reads on the date the appeal is filed to the tax court or as  
 42 thereafter amended. Either party to the action may appeal to the court of  
 43 appeals or supreme court as provided by law.

1           4. The action cannot be initiated or maintained unless the appellant  
2 has previously filed a timely request for review under section 23-672 or  
3 41-1992 and a decision on review has been issued.

4           Sec. 8. Title 41, chapter 14, article 3, Arizona Revised Statutes, is  
5 amended by adding section 41-1995, to read:

6           41-1995. Service of documents by electronic means

7           NOTWITHSTANDING SECTION 41-1002, SUBSECTION B AND SECTION 41-1063, THE  
8 HEARING OFFICER OR APPEALS BOARD, AS AN ALTERNATIVE TO ANY OTHER MEANS OF  
9 SERVICE PERMITTED OR REQUIRED BY ANY LAW, MAY SERVE OR DELIVER ANY NOTICE,  
10 DECISION OR ORDER OR ANY OTHER DOCUMENT BY ELECTRONIC MEANS IF THE PARTY  
11 BEING SERVED CONSENTS IN WRITING OR ON THE RECORD TO SERVICE BY ELECTRONIC  
12 MEANS. SERVICE BY ELECTRONIC MEANS IS DEEMED COMPLETE ON TRANSMISSION.